

Remarks

Claims 1-37 and 49-52 are pending in the above-mentioned patent Application. With this Response, Applicants cancel claims 24 and 50 and change the status identifier of claims 38-48 from “withdrawn” to “canceled”. Upon entry of the amendment, claims 1-23, 25-37, 49, 51, and 52 remain pending.

Applicants change the status identifier for claims 38-48 from “withdrawn” to “canceled” because claims 38-48 were cancelled in the Response filed on November 27, 2002.

Reconsideration and allowance of the claims in view of the amendment and following remarks are respectfully requested.

Claim Rejections Under 35 USC 102(e)

Claims 1-37 and 49-52 stand rejected under 35 U.S.C. 102(e) as being anticipated by Womack et al. (U.S. Pat. No. 6,307,184).

Applicants traverse this rejection because the Womack et al. reference is not by “another” and, therefore, is not a prior art reference under 102(e) in this case.

The inventive entity of the above-cited application includes the following inventors: Devendra Kumar, Jeffrey D. Womack, Vuong P. Nguyen, Jack S. Kasahara, and Sokol Ibrani. This inventive entity is identical to the inventive entity of the Womack et al. reference. Thus, the Womack et al. reference is not by “another” as required by 35 U.S.C. 102(e) and, therefore, is not a prior art reference under 102(e) in this case.

Because the Womack et al. reference is not prior art under 102(e), the Office Action’s basis for the above rejection has been removed and the rejection cannot stand.

Accordingly, Applicants request the rejection of claims 1-23, 25-37, 49, 51, and 52 under 35 U.S.C. 102(e) as being anticipated by Womack et al. be withdrawn. Claims 24 and 50 have been cancelled, thus the rejection of those claims is moot.

Affidavit under 37 C.F.R. §1.131 or §1.132

The Office Action suggests that the above 102(e) rejection can be overcome by submitting an affidavit under 37 C.F.R §1.131 or §1.132.

According to the Office Action:

The applied reference [Womack et al.] has a common inventor with the instant application ... This rejection under 35 U.S.C. 102(e) might be overcome either by a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention 'by another,'

Applicants acknowledge the Office Action's suggestion with appreciation, but, as discussed above, the inventive entities of the Womack et al. reference and the patent application under consideration are identical, thus the Womack et al. reference is not a 102(e) reference and an affidavit under 37 C.F.R. § 1.132 is not required to overcome the above 102(e) rejection.

Applicants also acknowledge with appreciation, the Office Action's suggestion to alternatively submit an affidavit under 37 C.F.R. § 1.131 to overcome the above 102(e) rejection. But, likewise, because the Womack et al. reference is not a 102(e) reference, an affidavit under 37 C.F.R. § 1.131 is not required to overcome the above 102(e) rejection.

Claim Rejections Under 35 USC 103(a)

Claims 1-37 and 49-52 stand rejected under 35 U.S.C. 103(a) as being obvious over Savas (U.S. Pat. No. 6,198,074), Armstrong et al. (U.S. Pat. No. 6,072,163), or Akimoto et al. (U.S. Pat. No. 5,620,560) in view of Womack et al. (6,307,184).

Applicants traverse this rejection because the Office Action's basis for this rejection requires the Womack et al. reference, which is not available as a prior art reference as discussed above.

The Office Action's basis for the 103(a) rejection, noted directly above, requires at least one of the primary references, Savas, Armstrong et al., or Akimoto et al., to have been modified by the secondary reference, Womack et al. However, as discussed above, the Womack et al. reference is not available as a prior art reference because it is not by "another" as required by 35 U.S.C 102(e). Thus, a necessary part of the Office Action's basis for this 103(a) rejection has been removed, no matter which primary reference is relied on, and, therefore, the rejection cannot stand.

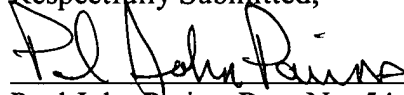
Accordingly, Applicants request that the rejection of claims 1-23, 25-37, 49, 51, and 52 under 35 U.S.C. 103(a) as being obvious over Savas, Armstrong et al., or Akimoto et al. in view of Womack et al. be withdrawn. Claims 24 and 50 have been cancelled, thus the rejection of those claims is moot.

Conclusion

In view of the above remarks, it is respectfully submitted that the claims and the present application are in condition for allowance. Approval of the application and allowance of the claims is earnestly solicited. In the event that a phone conference between the Examiner and the Applicant's undersigned attorney would help resolve any remaining issues in the application, the Examiner is invited to contact said attorney at (651) 275-9831.

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Respectfully Submitted,



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